

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RORY OWEN

Claimant

VS.

ARMOUR SWIFT-ECKRICH, INC.

Respondent

Self-Insured

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Docket No. 1,001,577

ORDER

Respondent appeals the preliminary hearing Order of Administrative Law Judge Bryce D. Benedict of June 4, 2002. Claimant was awarded temporary total disability compensation at the rate of \$237.35 per week, commencing October 9, 2001, through December 5, 2001. Additionally, claimant was granted medical treatment with Daniel T. Hinkin, M.D., until certified as having reached maximum medical improvement.

ISSUES

Did claimant suffer accidental injury arising out of and in the course of his employment on the date alleged?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented and for the purpose of preliminary hearing, the Appeal Board (Board) finds that the Order of the Administrative Law Judge should be reversed.

Claimant suffered a non-work-related accidental injury on September 17, 2001, when he struck a wall with his right hand. X-rays taken two days later on September 19, 2001, at the Geary Community Hospital, displayed a minimal avulsion chip fracture on the palmar surface base middle phalanx middle finger. Claimant's finger was placed in a splint, and he remained off work for approximately ten days. Claimant then returned to light duty work for approximately ten days. Claimant was then advised that he needed to

return to his regular duty, as light duty was intended only for work-related injuries. On October 8, 2001, shortly after returning to regular duty, claimant's finger became caught on a machine and, in claimant's words, his finger was hyperextended. Claimant testified that the finger became much worse after that, resulting in surgery with Dr. Hinkin on October 22, 2001. October 8, 2001, the date of accident, was claimant's last day at work with respondent before the surgery.

Claimant had a second x-ray performed of his hand on October 11, 2001, again at the Geary Community Hospital. At this time, the x-ray displayed a healing chip fracture from the base of the middle phalanx of the right third or long finger. This was noted as being a comparison to the prior study of September 17, although the x-ray was actually taken on September 19. The x-ray indicated evidence of partial healing since the previous examination.

Claimant argues that the incident on October 8, 2001, aggravated his non-work-related injury, entitling him to temporary benefits. Claimant was taken off work after the October 8 incident and alleges entitlement to temporary total disability compensation through December 5, 2001, when he was returned to work by his treating doctor.

The surgery on claimant's finger was at the same site as the original injury suffered in the September 17, 2001 non-work-related incident, when claimant struck the wall.

In workers' compensation litigation, it is claimant's burden to prove his entitlement to benefits by a preponderance of the credible evidence. See K.S.A. 44-501 and K.S.A. 2001 Supp. 44-508(g). Here, claimant alleges a temporary aggravation on October 8, 2001, of his preexisting injury. However, the x-rays taken on October 11, 2001, do not display an additional injury. Instead, the x-rays show a partially healed fracture. Why claimant suddenly needed surgery on October 22 is unknown, as medical records from the surgery were not placed into evidence. Claimant's testimony that his condition was worsened by the injury is uncontradicted by any other testimony. However, the medical records of October 11 cast serious doubt on whether the incident of October 8 had any effect whatsoever on claimant's hand.

The Board finds, for the purpose of preliminary hearing, that claimant has failed to prove an aggravation on October 8, 2001, of his preexisting, non-work-related injury. Therefore, the Order of the Administrative Law Judge is reversed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D. Benedict dated June 4, 2002, should be, and is hereby, reversed.

IT IS SO ORDERED.

Dated this ____ day of August 2002.

BOARD MEMBER

c: Roger D. Fincher, Attorney for Claimant
Mark E. Kolich, Attorney for Respondent
Bryce D. Benedict, Administrative Law Judge
Director, Division of Workers Compensation